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10/680,678	10/07/2003	James C. Crone	5164-001	5430
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COATS & BENNETT, PLLC P O BOX 5 RALEIGH, NC 27602			EXAMINER ZEENDER, FLORIAN M	
			ART UNIT 3627	PAPER NUMBER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/680,678
Filing Date: October 07, 2003
Appellant(s): CRONE, JAMES C.

Edward H. Green, III
For Appellant

**SUPPLEMENTAL
EXAMINER'S ANSWER**

This is in response to the ORDER REMANDING TO THE EXAMINER by the Board of Patent Appeals and Interferences mailed March 02, 2006, and the appeal brief filed 4/1/2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

WITHDRAWN REJECTIONS

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows: The grounds of rejection under 35 USC 101 are not presented for review on appeal because they have been withdrawn by the examiner.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,724,518	Helbling	03-1998
6,088,682	Burke	07-2000

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-6, 11-14, and 19-20 are rejected under 35 U.S.C. 103. This rejection is set forth in a prior Office Action, mailed on 2/2/2005.

Claims 7-10 and 15-18 are rejected under 35 U.S.C. 103. This rejection is set forth in a prior Office Action, mailed on 2/2/2005.

(10) Response to Argument

Response to the argument relating to the 101 ground of rejection.

The argument is moot because the rejection has been withdrawn by the Examiner.

Response to the argument relating to the 103 rejection over Helbling:

The appellant argues the patentability of the method and system claims as a group on pages 10-14 of the Brief. No subheadings are provided on pages 10-14 whereby the claims are argued separately as required by Rule 41.37(c). On page 14, under subheading "C", it appears that the appellant argues claim 1 (method claim) separately from the system claims, but it is unclear because the appellant then argues (in lines 2-3 of subheading "C") that the prior art, "Helbling as a whole teaches away

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from the very **structure and system** of the present invention” (emphasis added).

Further, on page 15, line 15, the appellant again argues/recites “the inventive method and system”. Because the applicant has not clearly provided arguments [in accordance with Rule 41.37(c)] that the claims are separately patentability, the Examiner will respond to appellant’s arguments as if the claims were grouped together. The broadest claim in the group is claim 11 and the Examiner has selected broad claim 11 from the group to decide the appeal with respect to the group of claims.

Examiner’s first interpretation of claim 11:

Claim 11 is a **system** claim. In a system claim, the apparatus has to be capable of performing the claimed function. The prior art, Helbling discloses an apparatus that is capable of performing the claimed function. Namely, Helbling, at least obviously, teaches a system (**see the disclosed figure**) for facilitating charitable donations by a restaurant customer comprising: 1) a point of sale station 10 operative to process and record the sale of a reduced-portion meal product (**for example a burger without mayonnaise, pickles, lettuce, and tomatoes**) at the price of a corresponding full-portion meal product (**i.e., the burger including the usual condiments**); 2) a database (within computer 13) operative to record the sales transaction including funds received pursuant to the transaction (See Helbling Col. 4, lines 22-41); 3) a financial transaction processor (within computer 13) operative to transfer 16 funds to a charitable organization 18 on behalf of the customer purchasing the product. Helbling clearly discloses the elements of the system of claim 11 and each element, at least obviously,

is **capable** of performing the associated function as claimed. Thus, the prior art anticipates the limitations of the claim and the rejection should be affirmed.

Examiner's second interpretation of claim 11:

If it were argued that a burger without condiments (*note element "1" in the paragraph above*) does not qualify as a "reduced-portion meal product", Helbling still anticipates the claim. Specifically, Helbling teaches a point of sale station 10 **that is fully capable** of processing and recording the sale of a reduced-portion meal product (**i.e., a burger, fries, without a beverage**) at the price of a corresponding full-portion meal product (**i.e., price of the burger, fries, and beverage; where the amount of charitable donation equals the price of the beverage**). This scenario, as discussed in the Office action mailed 2/2/05, anticipates the "point of sale station" functional limitation in system claim 11.

Appellant argues on page 10 of his Brief that Helbling does not teach selling a "reduced-portion meal" product and that Examiner uses impermissible hindsight. However, as noted above with respect to claim 11, Helbling does teach a system having elements capability of performing the functions claimed. No hindsight is necessary. Most of the additional arguments made by the appellant are not pertinent to **system claim 11**. Again, the **prior art system** only has to be **capable** of performing the functions, which Helbling does without necessitating hindsight.

Applicant further argues on pages 16-18 that the Applicant's specification clearly defines a reduced-portion meal product as having the same elements as its corresponding full-portion meal product, but in reduced quantities. Thus, the appellant

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states that the Examiner's argument (**second interpretation of claim 11**) where the reduce-portion meal product is interpreted to be a meal without a beverage, is incorrect because the reduced portion meal does not comprise the same elements as the full portion meal. However, the Examiner maintains his argument stated in the Final Office action that the Appellant's definition is not clearly defined, but is made ambiguous by the statement in the specification on page 5, lines 18-20, stating that *"those skilled in the art will readily recognize that a wide variety of reduced-portion meal product configurations, with concomitant cost and price structures, as well as operating fees, are possible within the broad practice of the present invention"*. The examples given in the specification, which Appellant relies on in his arguments, are just that, **"examples"**, that do **not** provide a clear definition of the terminology, "reduced-portion meal product".

Response to argument relating to the 103 rejection over Helbling in combination with Burke:

The applicant argues with respect to claims 7-10 and 15-18 that there is insufficient motivation to combine Helbling with Burke. However, Burke clearly teaches the benefit of providing the donor with a printed receipt for tax purposes (Col. 12, lines 63-63). Contrary to appellant's argument, tax deductions are major reasons why people give to charities. The appellant argues that most customers would not consider the miniscule tax savings to be worth it. However, Burke teaches tracking a customer's contributions over time, and certainly over the course of a year, a customer could accumulate enough of a contribution to make the deduction worthwhile. Thus, the arguments are not convincing.

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(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

F. RYAN ZEENDER
PRIMARY EXAMINER

Florian "Ryan" Zeender



3/22/06

Conferees:

Alex Kalinowski



Sough Hyung

